

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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DAVID ABARRA,

Plaintiff,

v.

CALVIN JOHNSON, *et al.*,

Defendants.

Case No. 3:22-cv-00131-MMD-CSD

ORDER

Plaintiff David Abarra brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 1-1.) On March 18, 2022, this Court ordered Abarra to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before May 17, 2022. (ECF No. 4.) The Court warned Abarra that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 3.) That deadline expired and Abarra did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond. Furthermore, the Court's order was returned as undeliverable because Plaintiff has not updated the Court with his current address. (ECF No. 5.)

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to

1 dismiss an action on one of these grounds, the Court must consider: (1) the public's
 2 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
 3 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 4 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
 5 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 6 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

7 The first two factors, the public's interest in expeditiously resolving this litigation
 8 and the Court's interest in managing its docket, weigh in favor of dismissal of Abarra's
 9 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
 10 because a presumption of injury arises from the occurrence of unreasonable delay in filing
 11 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
 12 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
 13 cases on their merits—is greatly outweighed by the factors favoring dismissal.


14 The fifth factor requires the Court to consider whether less drastic alternatives can
 15 be used to correct the party's failure that brought about the Court's need to consider
 16 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
 17 that considering less drastic alternatives *before* the party has disobeyed a court order
 18 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
 19 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
 20 “implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court's
 21 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
 22 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
 23 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
 24 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
 25 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
 26 unless Abarra either files a fully complete application to proceed *in forma pauperis* or
 27 pays the \$402 filing fee for a civil action, the only alternative is to enter a second order
 28 setting another deadline. But without an updated address, the likelihood that the second

1 order would even reach Abarra is low, so issuing a second order will only delay the
2 inevitable and further squander the Court's finite resources. Setting another deadline is
3 not a meaningful alternative given these circumstances. The fifth factor thus favors
4 dismissal.

5 Having thoroughly considered these dismissal factors, the Court finds that they
6 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
7 prejudice based on Abarra's failure to file a fully complete application to proceed *in forma*
8 *pauperis* or pay the full \$402 filing fee in compliance with this Court's March 18, 2022,
9 order.

10 The Clerk of Court is directed to enter judgment accordingly and close this case.
11 No other documents may be filed in this now-closed case. If Abarra wishes to pursue his
12 claims, he must file a complaint in a new case.

13 DATED THIS 3rd Day of June 2022.

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18 MIRANDA M. DU
19 CHIEF UNITED STATES DISTRICT JUDGE
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